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Third report on reservations to treaties

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Addendum

Contents

		Paragraphs	Page
II.	Definition of reservations to treaties (and of interpretative declarations)	48–	2
A.	Definition of reservations and of interpretative declarations	51–	2
1.	The definition of reservations in the Vienna Conventions	53–83	2
(a)	*Travaux préparatoires*	53–78	2
(i)	The 1969 Vienna Convention	53–68	2
(ii)	The 1978 and 1986 Vienna Conventions	69–78	7
(b)	Text of the definition	79–83	9

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II. Definition of reservations to treaties (and of interpretative declarations)

48. The three Vienna Conventions on the law of treaties, each in its respective article 2, provide a "positive" definition of reservations which is generally accepted and does not, in itself, pose any real problems. However, given the silence of the Conventions with regard to the concept of "interpretative declarations" – an omission which is, *prima facie*, difficult to explain – it is necessary to consider this subject *ex nihilo* and to derive from practice, the writings of jurists and judicial decisions a definition permitting the clearest possible distinction between the two institutions (section A).

49. Furthermore, as indicated in the commentary on the provisional plan of the study contained in his second report,[63] the Special Rapporteur also intends, for the sake of convenience, to study in this chapter the question of "reservations" to bilateral treaties, whose nature has often been disputed (section B).

50. Lastly, as likewise noted in the second report on reservations to treaties,[64] it "seems useful to link the consideration of this question to that of other procedures, which, while not constituting reservations are, like them, designed to and do enable States to modify obligations under treaties to which they are parties", and thus constitute alternatives to reservations which may be useful in certain cases (section C).

A. Definition of reservations and of interpretative declarations

51. Each of the Vienna Conventions of 1969, 1978 and 1986 contains a definition of the term "reservation". Taken together, these definitions make it possible to prepare a composite text which seems to constitute a satisfactory comprehensive definition. On the other hand, interpretative declarations were not defined in any of the Conventions, although such a course was sometimes envisaged during the *travaux préparatoires*.

52. Consequently, after the definitions of reservations embodied in the Vienna Conventions and the circumstances in which those definitions were adopted have been recalled (subsection 1), it will be necessary to examine the reactions to those definitions expressed in the writings of jurists and any difficulties that their implementation has caused in practice so that they may, if appropriate, be completed (subsection 2), before formulating a draft definition of interpretative declarations (subsection 3).

1. The definition of reservations in the Vienna Conventions

(a) *Travaux préparatoires*

(i) The 1969 Vienna Convention

53. The definition of reservations did not give rise to lengthy discussion when the 1969 Vienna Convention was being drawn up.

54. The Commission's first Special Rapporteur on the law of treaties, James L. Brierly, proposed a definition of reservations, very different from that finally adopted, since he

[63] A/CN.4/477, para. 40.

[64] Ibid., para. 39.

regarded reservations on a purely contractual institution.[65] The second Special Rapporteur, Sir Hersch Lauterpacht,[66] proposed no definition. However, Sir Gerald Fitzmaurice, in his first report, issued in 1956, provided a very precise definition which, with a number of drafting changes, is the direct source of the existing definition and is all the more valuable because the third Special Rapporteur on the law of treaties took care to define reservations in contrast to "mere declarations".

55. Article 13, paragraph 1, of the draft "Code on the Law of Treaties" which he prepared reads as follows:

> "(1) A 'reservation' is a unilateral statement appended to a signature, ratification, accession or acceptance, by which the State making it purports not to be bound by some particular substantive part or parts of the treaty, or reserves the right not to carry out, or to vary, the application of that part or parts; but it does not include mere statements as to how the State concerned proposes to implement the treaty, or declarations of understanding or interpretation, unless these imply a variation on the substantive terms or effect of the treaty."[67]

56. Believing this definition to be self-explanatory,[68] Fitzmaurice provided no commentary to it. However, article 37, paragraph 1, of the draft Code stated:

> "Only those reservations which involve a derogation of some kind from the substantive provisions of the treaty concerned are properly to be regarded as such, and the term reservation herein is to be understood as limited in that sense."[69]

Commenting on that provision, the Special Rapporteur emphasized that "a reservation only counts as such if it purports to derogate from a substantive provision of the treaty".[70]

57. The provisions concerning reservations proposed in the first Fitzmaurice report were not considered by the Commission, which did not revert to the question of reservations until 1962, when it examined the first report of Sir Humphrey Waldock.[71] In that report, the fourth Special Rapporteur proposed another definition of reservations, which was modelled very closely on that proposed by his predecessor and likewise defined interpretative declarations, at least *a contrario*:

> "'Reservation' means a unilateral statement whereby a State, when signing, ratifying, acceding to or accepting a treaty, specifies as a condition of its consent to

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[65] "That word [reservation] is used as meaning a special stipulation which has been agreed upon, between the parties to a treaty, limiting or varying the effect to the treaty as it applies between a particular party and all or some of the remaining parties" (first report on the law of treaties, *Yearbook of the International Law Commission, 1950*, vol. II, document A/CN.4/23, pp. 238-239, para. 84). For the discussion on this point, see *op. cit.*, vol. I, pp. 90-91. For a brief commentary on this definition, see sect. 2 (b) (i) below. The 1951 Brierly report on reservations to treaties proposes no definition but has an annex B entitled "Opinions of writers" which reproduces numerous definitions formulated by jurists (*Yearbook ... 1951*, vol. II, document A/CN.4/41, pp. 1-17). For a summary of this early work, see the first report on reservations to treaties mentioned in footnote 1 above, paras. 12-22.

[66] See his first and second reports on the law of treaties, *Yearbook ... 1953*, vol. II, pp. 91-92 and 123-136, A/CN.4/63, and *Yearbook ... 1954*, vol. II, pp. 131-133, A/CN.4/87. See also the first report on reservations to treaties, A/CN.4/470, paras. 23-29.

[67] Sir Gerald Fitzmaurice, first report on the law of treaties, *Yearbook ... 1956*, vol. II, p. 110, document A/CN.4/101.

[68] Ibid., p. 119, para. 23.

[69] Ibid., p. 115.

[70] Ibid., p. 126, para. 92.

[71] See the first report on reservations to treaties, mentioned in footnote 1 above, document A/CN.4/470, paras. 33 and 35.

be bound by the treaty a certain term which will vary the legal effect of the treaty in its application between that State and the other party or parties to the treaty. An explanatory statement or statement of intention or of understanding as to the meaning of the treaty, which does not amount to a variation in the legal effect of the treaty, does not constitute a reservation."[72]

58. The Special Rapporteur provided no commentary to this draft definition, believing it to be self-explanatory,[73] and strangely enough the Commission did not consider it, because the Special Rapporteur had suggested that the definitions (which were then set forth in draft article 1) could be taken up as appropriate in the course of the discussion.[74]

59. The question of the definition of reservations, though never taken up per se, was touched upon several times during the long discussion of the legal regime of reservations which took place at the fourteenth session. Interesting comments were made on that occasion. Thus, Mr. Lachs, who considered that on the whole the proposed definition was sound, felt that "an essential feature of a reservation was its unilateral character".[75] He particularly congratulated the Special Rapporteur on "the felicitous precision of the phrase 'which will vary the legal effect of the treaty'. That sentence also covered the cases, which were not unknown, where a reservation, instead of restricting, extended the obligations assumed by the party in question."[76]

60. During the same discussion, Mr. Castrén expressed doubt as to the wisdom of retaining the second sentence of the definition proposed by Sir Humphrey Waldock; in his view, "the explanatory and other statements referred to were rare in practice; moreover, if they occurred, it was difficult to see which authority was to decide the nature of the statement".[77] Although Mr. Tsuruoka urged that the distinction be maintained,[78] the allusion to explanatory statements disappeared as a result of circumstances which cannot be determined from a reading of the summary records.

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[72] Article 1 (1), *Yearbook ... 1962*, vol. II, pp. 31-32, A/CN.4/144.

[73] Ibid., p. 34, para. 14.

[74] *Yearbook ... 1962*, vol. I, 637th meeting, 7 May 1962, p. 47, para. 32. The same course was followed in 1965 during the second reading of the draft articles (*Yearbook ... 1965*, vol. I, 778th meeting, 6 May 1965, p. 17, para. 11).

[75] *Yearbook ... 1962*, vol. I, 651st meeting, 25 May 1962, p. 142, para. 49. Similar views were expressed by Mr. Rosenne, ibid., p. 144, para. 78, and Mr. Tunkin, who agreed with the view that "a reservation was a kind of offer by the reserving State, which the other Parties, in the exercise of their sovereignty, were free to accept or to reject" (653rd meeting, 29 May 1962, p. 156, para. 25). Mr. Paredes did not quite agree with that view, because more than one State might make "identical reservations, jointly or separately" (ibid., 651st meeting, 25 May 1962, p. 146, para. 87); the present Special Rapporteur feels that this circumstance (which may in fact arise) does not call in question the unilateral character of each of those identical reservations.

[76] Ibid. It is interesting to note that, during the consideration of the first report on reservations to treaties, Mr. Tomuschat likewise approached the question from this angle, but took a totally opposite position (see A/CN.4/SR.2401, 16 June 1995, pp. 4, 5 and 6; for the opposing view, see the position adopted by Mr. Bowett, ibid., pp. 6 and 7). In its comments on the draft articles adopted in first reading, the Government of Japan likewise considered "that the words 'or vary' should be replaced by the words 'or restrict' because, in its view, only a statement which restricts the legal effect of a provision properly falls within the meaning of the term 'reservation'". Sir Humphrey Waldock contested that view, arguing that "a unilateral statement in which a State purports to interpret a provision as conferring upon it a larger right than is apparently created by the language of the provision, or purports to impose a condition enlarging its rights, would seem to require to be treated as a 'reservation'" (*Yearbook ... 1965*, vol. II, p. 15, document A/CN.4/177 and Add.1 and 2).

[77] *Yearbook ... 1962*, vol. I, 652nd meeting, 28 May 1962, p. 148, para. 27.

[78] Ibid., p. 151, para. 64.

61. In any event, the draft definition was referred to the Drafting Committee, which produced a text more elegant than that proposed by the Special Rapporteur; the second sentence of the latter text had been deleted without explanation. The new text read as follows:

> "(f) 'reservation' means a unilateral statement made by a State, when signing, ratifying, acceding to, accepting or approving[79] a treaty, whereby it purports to exclude or vary the legal effect of some provisions of the treaty in its application to that State".[80]

This text was adopted in the plenary meeting without discussion and without a vote.[81]

62. However, the slow evolution of the definition of reservations ultimately used in the Vienna Convention had not yet come to an end.[82] The definition still lacked precision on a point of some importance, which is covered in the final text: the irrelevance of phrasing or naming. This addition results from the mysterious transmutation effected by the Drafting Committee in 1965, at the seventeenth session. When introducing this clarification, Sir Humphrey Waldock noted that in adopting it, "the Drafting Committee had sought to bring out that, however designated, any statement purporting to exclude or vary the legal effects of certain provisions of a treaty would constitute a reservation".[83] This draft definition, like the others, was adopted unanimously.[84]

63. Thereafter, the text of the definition[85] was not amended. The commentary that the Commission appended in its report to the General Assembly on the work of its eighteenth session (1966), which was used as a working document at the Vienna Conference, is therefore extremely important. It is short but significant for, once again, Commission tacitly contrasts the concept of a reservation with that of an interpretative declaration (even if the latter term is not actually used):

> "The need for this definition arises from the fact that States, when signing, ratifying, acceding to, accepting or approving a treaty, not infrequently make declarations as to their understanding of some matter or as to their interpretation of a particular provision. Such a declaration may be a mere clarification of the State's position or it may amount to a reservation, according as it does or does not vary or exclude the application of the terms of the Treaty as adopted".[86]

64. In these circumstances it may seem strange that the Commission did not follow the original intention of its Special Rapporteur[87] and complete the definition of a reservation by defining an interpretative declaration. Sir Humphrey Waldock explained this apparent reversal in his observations and proposals relating to the observations of the British and

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[79] The word "approve" was added by the Drafting Committee, for the sake of consistency with what subsequently became article 11 of the Convention.

[80] *Yearbook ... 1962*, vol. I, 666th meeting, 22 June 1962, p. 239, para. 1.

[81] Ibid., p. 240, para. 9.

[82] In accordance with a suggestion by the Government of Israel, the English text (which read "statement ... whereby it purports to exclude or vary the legal effect of *some* provisions") was brought into line with the French and Spanish texts ("*certaines* dispositions", "*algunas* dispociones") (*Yearbook ... 1965*, vol. II, p. 15, document A/CN.4/177 and Add.1 and 2).

[83] *Yearbook ... 1965*, vol. I, 820th meeting, 8 July 1965, p. 308, para. 20.

[84] Ibid., p. 308, para. 26.

[85] Reproduced in *Yearbook ... 1965*, vol. II, p. 160 and in *Yearbook ... 1966*, vol. II, p. 178.

[86] *Yearbook ... 1966*, vol. II, commentary to article 2, pp. 189-190, para. (11).

[87] See para. 54 above.

Japanese Governments, which were concerned because the draft did not mention "interpretative declarations".[88] His response deserves to be quoted at length:

> "The Japanese Government notes that not infrequently a difficulty arises in practice of determining whether a statement has the character of a [reservation] or of an [interpretative declaration] and suggests the insertion of a new provision ... to overcome the difficulty. This suggestion appears to the Special Rapporteur to overlook the fact that the term 'reservation' is already defined in article 1, paragraph 1 (f), in terms which indicate that it is something other than a mere interpretative understanding of the provision to which it relates.[89]

This indicates yet again that the concepts of reservation and interpretative declaration can only be defined in relation to each other.

65. Sir Humphrey Waldock adds:

> "Statements of interpretation were not dealt with by the Commission in the present section [on reservations] for the simple reason that they are not reservations and appear to concern the interpretation rather than the conclusion of treaties. In short, they appear to fall under the articles [relating to interpretation]."[90]

66. Either inadvertently or with the intention of avoiding further discussion of this difficult issue at a very late stage in the work, the Special Rapporteur did not tackle the problem of the definition and legal regime of interpretative declarations in his sixth report. However, when commenting in that report on the observations of Governments, he did revert to questions linked to the interpretation of treaties. Furthermore, responding to a suggestion by the United States, he observed: "It would seem clear on principle that a unilateral document cannot be regarded as part of the 'context' for the purpose of interpreting a treaty, unless its relevance for the interpretation of the treaty or for determining the conditions of the particular State's acceptance of the treaty is acquiesced in by the other parties". He emphasized that the "essential point" was "the need for express or implied assent".[91] In any case, the definition of interpretative declarations was not mentioned.

67. At the Vienna Conference, six States submitted amendments to article 2, paragraph 1 (d), of the Commission's draft,[92] which were referred to the Drafting Committee. The Hungarian amendment was undoubtedly the broadest in scope.[93] Like China and Chile, Hungary wished to specify that a reservation could only be formulated with respect to a multilateral treaty, but above all, it wished it to be acknowledged that a reservation could

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[88] See *Yearbook ... 1965*, vol. II, p. 46.

[89] Ibid., p. 49, para. 1.

[90] Ibid., para. 2, the Special Rapporteur added a number of very interesting comments concerning the legal regime of interpretative declarations, to which it will be helpful to revert at a later stage.

[91] *Yearbook ... 1966*, vol. II, commentary to articles 69, 70 and 71, p. 98, para. 16.

[92] These countries were Sweden, China, the United States, Chile, Hungary and Viet Nam. See *Report of the Committee of the Whole on its work at the first session of the Conference* (A/CONF.39/14), vol. I, para. 35; *Report of the United Nations Conference on the Law of Treaties, First and Second Sessions, Vienna, 26 March-24 May 1968 and 9 April-22 May 1969*, Documents of the Conference (United Nations publication, Sales No. E.70.V.5).

[93] Ibid., para. 35 (vi) (e). See also the explanations given by the Hungarian representative, Mr. Haraszti, *Report of the United Nations Conference on the Law of Treaties, First Session, Vienna, 26 March-24 May 1968, Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (A/CONF 39/11), 4th meeting, 29 March 1968, paras. 24 and 25.

be designed not only "to exclude or to vary the legal effect" of certain provisions of a treaty, but also to *interpret* that legal effect.[94]

68. If an amendment along these lines had been adopted, the concept of a reservation would have encompassed, and could not have been disassociated from, the concept of an interpretative declaration.[95] However, the Hungarian amendment, like the other amendments submitted, was not adopted. The Drafting Committee considered them all "superfluous",[96] and reproduced the text adopted by the Commission.[97] That text was adopted by the Committee of the Whole without a vote,[98] and then by the Conference by 94 votes to none, with 3 abstentions.[99]

(ii) The 1978 and 1986 Vienna Conventions

69. The question of the definition of reservations gave rise to no substantive discussion during the preparation of the 1978 Vienna Convention on Succession of States in respect of Treaties and of the 1986 Vienna Convention on Treaties between States and International Organizations or between International Organizations. In both cases it was more or less taken for granted that the definition adopted in 1969 would be used again.

70. With regard to the Convention on Succession of States in respect of Treaties, Sir Humphrey Waldock, once again the Special Rapporteur, did not propose the inclusion of a definition of reservations in the draft articles and explained that "personally, he thought that cross-reference to the 1969 Vienna Convention on the Law of Treaties would be convenient as it would avoid having to frame a set of provisions on *such difficult questions as reservations*".[100] The principle of such a referral having been called in question, not without reason,[101] the Drafting Committee adopted a definition of reservations which was in turn adopted by the Commission as part of the draft articles on succession of States in

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[94] This wording is rather strange, for although the meaning of "interpreting a treaty" is clear [?], the idea of "interpreting its legal effect" is more obscure. (See in this connection the position of Austria, ibid., Committee of the Whole, 6th meeting, para. 17.)

[95] "It was ... preferable to provide expressly that declarations as to interpretation were to be treated as reservations" (Mr. Haraszti, ibid., 4th meeting, para. 25).

[96] *Report of the United Nations Conference on the Law of Treaties, Second Session, Vienna, 9 April-22 May 1969, Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (A/CONF.39/11/Add.1), Committee of the Whole, 150th meeting, 25 April 1969, para. 28. The Hungarian amendment nevertheless received a certain amount of support during the discussion in the Committee of the Whole; see the aforementioned *Summary records* (footnote 93), 5th meeting, 29 March 1968: Syria (para. 5), Greece (para. 16), Italy (para. 22), Czechoslovakia (para. 30), Lebanon (para. 43), Sweden (para. 54), Bulgaria (para. 58), Argentina (para. 69), USSR (para. 86), Mongolia (6th meeting, 1 April 1968, para. 2), Central African Republic (para. 22). It is open to question, however, whether most of the speakers were not expressing support for the addition of the word "unilateral" rather than for the idea of treating interpretative declarations as reservations, which was opposed by the United Kingdom (5th meeting, para. 96), the United States (para. 116), Ireland (6th meeting, para. 18) and Sir Humphrey Waldock, Expert Consultant (para. 28).

[97] At least in the case of the French text; the English and Russian texts were changed so as to bring the order of the words "signing, ratifying, accepting or approving" into line with that used in article 16 (which became article 11) of the Convention, as had already been done in the other versions (cf. ibid.).

[98] See the *Report of the Committee of the Whole on its work at the second session of the Conference* (A/CONF.39/15), paras. 25 and 26.

[99] *Summary records* mentioned above (footnote 96), 28th plenary meeting, 16 May 1969, para. 48.

[100] *Yearbook ... 1972*, vol. I, Summary records of the twenty-fourth session, 1158th meeting, 15 May 1972, p. 42, para. 9; emphasis added.

[101] For a forceful argument against referral, see for example the statement by Mr. Ushakov at the 1272nd meeting, 6 June 1974, *Yearbook... 1974*, vol. I, pp. 115-116, para. 31.

respect of treaties on 5 July 1972[102] and remained unchanged thereafter. As noted in the report of the Commission on the work of its twenty-fourth session, that definition "reproduces the wording ... of the Vienna Convention" of 1969.[103]

71. No Government commented on the definition[104] and it was reproduced without change in the Commission's final report on the topic, with the same commentary as in 1972.[105]

72. No amendments were proposed to the text, which was adopted by the Conference at the same time as the rest of article 2;[106] the question of the definition of reservations was not even mentioned.

73. With regard to the definition of reservations in article 2, paragraph 1 (d), of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, the text originates in the proposal made by the Special Rapporteur, Mr. Paul Reuter, in his third report, issued in 1974. That definition was based on the 1969 definition, the only difference being the addition of a reference to international organizations as well as States.

74. In his commentary, the Special Rapporteur observed:

> "There is apparently no theoretical or practical reason to depart from the definition of reservations given in the 1969 Convention. It will be noted, however, that the fact that international organizations are not parties to multilateral treaties would suffice to explain why the practice of reservations does not exist among international organizations."[107]

75. On that basis, the Commission provisionally adopted a text which reflects its perplexity since, rather than reproducing the somewhat cumbersome list of ways of expressing consent contained in the 1969 definition, it proposed to simplify that wording by saying only: "'reservation' means a unilateral statement, however phrased or named, made by a State or by an international organization when signing or consenting [*by any agreed means*] to be bound by a treaty ...".[108]

76. According to the commentary, this change, based on an amendment by Poland and the United States at the Vienna Conference,[109] which is the origin of the existing article 11 of the 1969 Convention (but which was not adopted in its original form)[110] has "the twofold advantage of being simpler than the corresponding provision of the Vienna Convention and

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[102] *Yearbook ... 1972*, vol. I, 1196th meeting, p. 271, para. 33.

[103] *Yearbook ... 1972*, vol. II, document A/8710/Rev.1, commentary to draft article 2, para. (8), pp. 231-232.

[104] See the first report on succession of States in respect of treaties by Sir Francis Vallat, *Yearbook ... 1974*, vol. II (Part One), document A/CN.4/278 and Add.1-6, p. 32, para. 151.

[105] *Yearbook ... 1974*, vol. II (Part One), report of the International Law Commission on the work of its twenty-sixth session, document A/9610/Rev.1, para. (11) of the commentary to draft article 2, p. 176.

[106] *Report of the United Nations Conference on Succession of States in respect of Treaties, Resumed session, Vienna, 31 July-23 August 1978*, vol. II, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (A/CONF.80/10/Add.1), 14th plenary meeting of the Conference, 22 August 1978, para. 9. See also Committee of the Whole, 52nd meeting, 15 August 1978, para. 73 (provisional adoption of the Commission's draft and referral to the Drafting Committee, by 71 votes to 5 with 1 abstention), and 56th meeting, 21 August 1978, para. 36 (adoption by consensus in second reading).

[107] *Yearbook ... 1974*, vol. II (Part One), p. 141, document A/CN.4/279.

[108] *Yearbook ... 1974*, vol. II (Part One), report of the International Law Commission on the work of its twenty-sixth session, document A/9610/Rev.1, p. 294, emphasis added.

[109] Report of Commission mentioned above (footnote 92), document A/CONF.39/14, vol. I, para. 104 (a).

[110] Ibid., paras. 106-108.

of leaving in abeyance the question whether the terms 'ratification', 'acceptance', 'approval', and 'accession' could also be used in connexion with acts whereby an organization expressed its consent to be bound by a treaty".[111]

77. However, after adopting new provisions[112] which established an "act of formal confirmation" for international organizations as equivalent to ratification for States, the Commission, at its thirty-third session, in 1981, "saw no reason that would justify the maintenance of the first reading text as opposed to returning to a text which could now more closely follow that of the corresponding definition given in the Vienna Convention".[113] It therefore reproduced the 1969 definition and added the act of formal confirmation to the list of circumstances in which a reservation could be made.[114] The Commission's final report on the draft, issued in 1982, reproduced the same text, accompanied by the same commentary.[115]

78. The Commission's text was adopted, without change or debate and by consensus, on 18 March 1986, by the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations;[116] no amendments were proposed.

(b) Text of the definition

79. Article 2, paragraph 1 (d), of the Vienna Convention on the Law of Treaties of 23 May 1969 reads as follows:

> **"'reservation' means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State".**

80. This definition is reproduced without change in article 2, paragraph 1 (j), of the Vienna Convention on Succession of States in respect of Treaties of 23 August 1978, which nevertheless adds a reference to the various circumstances in which a reservation can be made by a State "when making a notification of succession to a treaty":

> **"'reservation' means a unilateral statement, however phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a treaty or *when making a notification of succession to a treaty*, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State".**[117]

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[111] *Yearbook ... 1974*, vol. II, (Part One), document A/9610/Rev.1, para. (4) of the commentary to draft article 2, p. 295. For the Commission's discussion of this provision, see *Yearbook ... 1974*, vol. I, 1279th meeting, 17 June 1974, pp. 162, 164, paras. 55-56 and 72, and 1291st meeting, 9 July 1974, pp. 231-232, paras. 15-20.

[112] Article 2, paragraphs 1 (b) and 1 (b *bis*) and article 11.

[113] *Yearbook ... 1981*, vol. II, (Part Two), commentary to draft article 2, p. 123, para. (14), for the Commission's discussion of this initiative, apparently taken by the Drafting Committee, see the summary record of the 1692nd meeting, 16 July 1981, *Yearbook ... 1981*, vol. I, p. 262, paras. 13-17.

[114] *Yearbook ... 1981*, vol. II, (Part Two), p. 121.

[115] *Yearbook ... 1982*, vol. II, (Part Two), commentary to draft article 2, pp. 19-20, paras. (12)-(14).

[116] *Report of the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations*, Vienna, 18 February-21 March 1986, vol. I, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole*, 5th plenary meeting, 18 March 1986, para. 21.

[117] The words in italics indicate the addition made to the 1969 text.

81. The 1969 definition was also the model for that given in article 2, paragraph 1 (d), of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 21 March 1986, which nevertheless, in accordance with its object, adapted the earlier definition to treaties concluded by international organizations:

> **"'reservation' means a unilateral statement, however phrased or named, made by a State or *by an international organization* when signing, ratifying, *formally confirming*, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State *or to that organization*".**[118]

82. These texts, based on the 1969 definition and adapted to the particular object of the other two Conventions, are not mutually contradictory but on the contrary usefully complement each other. The various elements of those texts can be combined to produce the following composite text:[119]

> ***"'reservation' means a unilateral statement, however phrased or named, made by a State or by an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty or [by a State] when making a notification of succession to a treaty, whereby the State or organization purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State or to that organization".***

83. Each of the three Conventions states explicitly that the definitions are given "for the purposes of the present Convention".

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[118] The words in italics indicate the additions made to the 1969 text.

[119] With reference to this idea, see para. 40 above.